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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/723,326	11/28/2000	Keith A. Webster	10989-004-999	5537

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07/30/2003

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EXAMINER

MCKELVEY, TERRY ALAN

ART UNIT

PAPER NUMBER

1636

25

DATE MAILED: 07/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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Commissioner for Patents

The reply filed on 5/12/03 is not fully responsive to the prior Office Action because of the following omission(s) or matter(s): the listing of all claims readable upon the elected species is inconsistent and thus some of the claims so identified are incorrect. A correct listing of the claims readable on the elected species is required. The inconsistencies are as follows:

1. elected cardiac muscle-specific promoter was indicated as being readable on claims 2-3 (viral promoter and mammalian promoter active in a plurality of different tissues), but this species was indicated as not being readable on claims 54-55 (drawn to the same limitations of claims 2-3).
2. elected HRE element was indicated as not being readable on claims 16-17 (drawn to particular types of conditionally inducible elements), but the HRE element was also elected as being from the erythropoietin gene, and the claims indicated as being readable on that election include claims 16-17.
3. elected VEGF nucleotide sequence in a vector was indicated as being readable on both claim 18 and 20, but claim 18 is drawn to functional coding region of a VEGF gene and claim 20 is drawn to a functional antisense portion of a VEGF gene, which is a different species. One or the other must be elected.
4. elected human synapsin silencer element was indicated as being readable on claim 7 (neuron restrictive silencer), but this species was indicated as not being readable on claim 56 (drawn to the same limitation of claim 7).

The inconsistencies must be resolved in response to this communication so that all of the claims that are readable on the elected claims are properly indicated. Also, the applicant should indicate the final set of claims that are readable on the combination of elected species by listing the claims that are readable on all five species elected. This is the set of claims that are to be initially examined.

See 37 CFR 1.111. Since the above-mentioned reply appears to be bona fide, applicant is given ONE (1) MONTH or THIRTY (30) DAYS from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

The Examiner apologizes for not identifying the problems early enough to telephonically resolve the matter prior to the deadline for sending the instant communication. If the applicant is interested in expediting the examination of the instant application, the applicant is invited to telephone the Examiner at the number listed below so that a fax response resolving the noted problems may be directly sent to the examiner. Any inquiry concerning rejections or other major issues in this communication or earlier communications from the examiner should be directed to Terry A. McKelvey whose telephone number is (703) 305-7213. The examiner can normally be reached on Monday through Friday, except for Wednesdays, from about 7:30 AM to about 6:00 PM. A phone message left at this number will be responded to as soon as possible (i.e., shortly after the examiner returns to his office). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Remy Yucel can be reached on (703) 305-1998.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Terry A. McKelvey
TERRY MCKELVEY
PRIMARY EXAMINER